IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH JAIPUR

S.B. Civil Writ Petition No.4608/97
M/s Babu Lal Trading Company Vs. Krishi Upaj Mandi Samiti

S.B. Civil Writ Petition No.4162/96
M/s Raj Kumar Nemi Chand Vs. State

S.B. Civil Writ Petition No.4782/96
Marudhar Sales Corp. Vs. State & Ors.

S.B. Civil Writ Petition No.3486/97
M/s Radhey Shyam Dinesh Kumar Vs. Krishi Upaj Mandi Samiti

S.B. Civil Writ Petition No.4701/96
Shyam Trading Company Vs. State & Ors.

S.B. Civil Writ Petition No.3485/97
M/s Satya Narain Om Prakash Vs. Krishi Upaj Mandi Samiti, Jaipur

S.B. Civil Writ Petition No.220/2000
Ram Avtar & Co. Vs. State & Ors.

S.B. Civil Writ Petition No.4016/97
M/s Satish Trading Co. Vs. Krishi Upaj Mandi Samit, Jaipur

S.B. Civil Writ Petition No.4018/1997
M/s Jagdish Narain Ram Gopal Vs. Krishi Upaj Mandi Samit, Jaipur

23.02.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Nitin Jain for petitioners.
Shri Manish Bhandari)
Shri R.A. Katta)
Shri Anuroop Singhi)
Shri Satish Khandelwal)
Shri Manish Gupta)
Ms. Anisha Jain) for respondents.
Shri B.S. Chhaba, Deputy Government Advocate
for State.

Heard learned counsels for the parties.

Since these writ petitions raise similar questions of fact and law and, therefore, they were ordered to be connected with each other and were heard together and are now being decided also by a common judgment. For the purpose of decision of the petitions, the facts of only first petition namely S.B. Civil Writ Petition No.4608/1997 are being referred to.

The petitioner in that case has asserted that he was alloted Shop No.H-7 in Surajpole Anaz Mandi vide decision of the Allotment Committee dated 25.6.1992 at the monthly rent of Rs.1150/- per month. The petitioner accordingly deposited the earnest money equivalent to

three months rent. It has been stated that although the Mandi Samiti did not provide basic amenities like light, water, security, chowkidar, telephone, road lights or road etc., yet however they proceeded to go ahead with making of allotments. This was done with the clear understanding that they will provide all the facilities which may enable the petitioners to run their business smoothly and only thereafter they would start charging rent or allotment charges for the respective shops. In spite of such assurances, however they did not provide all these facilities. Number of representation were submitted by the Khadya Padarth Vyapar Sangh, Jaipur of which the petitioners are members. It has been submitted that in absence of basic amenities like light, water, security,

chowkidar, telephone, road lights or road etc., it was not possible for the petitioners to start their business from the allotted shops. A number of documents have been placed on record to substantiate these averments that the petitioners and on their behalf, the Khadya Padarth Vyapar Sangh have been in correspondence with the authorities to impress upon them to provide the basic infrastructure. It has been stated that although the respondents are not providing all these facilities, but keeping in view the hardship faced by the petitioner, they decided to charge the rent of the past months in monthly installments without charging any interest. The copy of the order dated 27.5.1995/6.6.1995 has been placed on record to this effect. It has been stated

that when the petitioner approached the Rajasthan State Electricity Board for providing electric connection, he was told that the Mandi Samiti has not even deposited the cable charges and transformer charges. The same problem was also with the Water Works Department when the petitioner approached to get a connection for water supply. The contract for construction of the road in the mandi was awarded as late as on 6.1.1997 and the Mandi Samiti deposited a sum of Rs.3,14,923/- also on 26.2.1997. Suddenly, however, the respondent Samiti by its order dated 23.5.1997 required the petitioner to vacate the shop. It has been stated that the petitioner has deposited a sum of Rs.2300/- vide its cheque No.148311 dated 20.6.97 with the respondents for rent of two months from

the period 1.4.1997 to 31.5.1997 and has thereafter been paying the rent on regular basis. Similar are the facts with respect to other petitions wherein also the petitioners in spite of having been alloted the shops in the year 1992, could not actually shift to the New Mandi to start the business only because of the inability of the respondents to provide the basic facilities referred to above. They assert that they have been regularly paying the rent to the respondents with effect from 1st April, 1997 and have been running their business from those shops.

When these matters came to be considered by this Court on 11.8.2006, a Court Commissioner was deputed to go and inspect the mandi premises. Report of the Court Commissioner is available on record. Though the report is merely

indicative of the present status, but none the less, it also admits that a lot more improvement needs to be done, while at the same acknowledging availability of the aforesaid facilities.

Shri Nitin Jain, the learned counsel for the petitioners argued that the petitioners had to approach this Court because in spite of failure of the respondents to provide basic facilities, they were insisting on charging rent not only the rent but also the interest, surcharge, penalty and mandi tax which had become due. He has submitted that the facilities have been provided much after 31.3.1997 and that the petitioners have been regularly making payment of the rent after that period. The respondents by issue of mandamus be directed not to charge the rent, interest, penalty,

surcharge and mandi tax and house rent etc. All these charges would prove onerous to the petitioners particularly when they could not start the business for no fault of theirs. It has been argued that the order of the respondents cancelling their allotment vide order dated 9.8.1995 and the notice dated 23.5.1997 requiring them to vacate the shops within seven days should be held to be illegal and unconstitutional having been passed contrary to the principles of natural justice and without providing any opportunity of hearing. He, therefore, prayed that the writ petition be allowed.

On the other hand, Shri Manish Bhandari, Shri R.A. Katta and Shri Anuroop Singhi, the learned counsel for the respondents argued that each of the petitioners have entered into an

agreement with the respondent Samiti at the time of allotment of shops. According to the terms of the agreement they offered to not only make payment of the rent but other charges such as mandi tax, house tax and surcharge etc. and also interest if they made default in making payment of the rent. Having signed the agreement, they cannot be now allowed to turn about and challenge the correctness of such agreement. He asserted that all facilities had actually been provided in the premises of the Mandi Samiti in as much as the allotment is made to the petitioners of their own application. When the petitioners did not seek any remedy from 1992 to 1997, they cannot be permitted to raise these issues in the present case now in a petition which has been filed belatedly in the year 1997. He

argued that the petitioners' allotment has been cancelled strictly in accordance with the terms of the agreement. It is a contractual dispute based on the agreement between the parties and involving seriously disputed question of facts, which cannot be appropriately gone into by this Court in exercise of its power of judicial review under Article 226 of the Constitution of India. The learned counsels relied on the decision of this Court in M/s. Ram Sukh Chunni Lal Vs. State of Raj. & Ors., S.B. Civil Writ Petition No.9590/2005 decided on 23.8.2006 in which somewhat similar controversy with regard to cancellation of allotment in the Surajpole Anaz Mandi itself was under examination and submitted that a co-ordinate bench of this Court in the aforesaid judgment has

held that the petitioners in that case having entered into an agreement in the year 1992 with the mandi were bound by its terms and conditions and cannot be allowed to challenge the rate of interest as mentioned in the original lease agreement after inordinate delay. It was, therefore, prayed that the writ petition be dismissed.

I have given by earnest consideration to the rival submissions and perused the material on record and also respectfully studied the judgment of the coordinate bench in M/s. Ram Sukh Chunni Lal (supra). It is a common ground between the parties that allotment to the petitioner was made on recommendation of the allotment committee way back in 1992. An agreement was entered into between the petitioners on the one hand and the

respondents on the other hand, which regulated the terms and conditions of such allotment and the conduct of the parties in future. According to these terms and conditions, apart from the rent, the petitioners undertook the liability of making payment of rent, mandi tax, surcharge and other taxes as also the interest in the event of their default or delay in making payment of the rent. The petitioners have asserted that the basic facilities like light, water, security, Chowkidar, telephone, road lights and road etc were not provided by the respondents and that the petitioners individually and on their behalf, Khadya Padarth Vyapar Sangh, Jaipur had been making representations to the concerned authorities time and again for providing all these facilities. The respondents

however did not timely create such facilities and therefore they could not actually shift from the mandi to start the business. They should not be therefore made liable to make payment of the interest and other taxes / charges etc. for the period before 31.3.1997. In the facts of the case I find that immediately when notice was served on the petitioners on 23.5.1997, requiring them to vacate the shops within 7 days and also to remove their agriculture products etc therefrom, they not only paid the rent for the period of two months starting from 1st April, 1997 but even started making payment continuously thereafter. While issuing notice to the respondents, this Court had directed the parties to maintain status quo which order has continued since then but it is

not disputed that the petitioners have been making payment of the rent continuously and, therefore, they are also trading from the new mandi since thereafter. The report of the Commissioner that is now available on the record does not show total lack of infrastructure/facilities in the mandi. At the same time however such report cannot be indicative of the ground situation prior to 31.3.1997 upto which period the petitioners have omitted to make payment of the rent. Although the petitioners have placed on record a large number of documents which show that the petitioners as also their union Khadya Padarth Vyapar Sangh, Jaipur had been taking up the matter with the authorities for providing the aforestated amenities. But the petitioners on issuance of notice

have not taken any legal remedy for which an action on the part of the respondent in time was required as rightly observed by this Court in aforesaid judgment of 23.8.2006. Whether or not basic infrastructure was created by the respondents between 92 to 97 and whether the infrastructure which is not available there are as per the report of the Commissioner are questions which are seriously disputable and are in fact being disputed by the respondents and, therefore, the exercise of power of judicial review under Article 226 may be not only possible but not permissible in law either. As rightly observed by this Court in M/s. Ram Sukh Chunni Lal (supra) it was for the petitioners to make a representation to the Government for concession in respect of previous dues

and interest part. In this case though there are a number of documents which are placed on record on behalf of the petitioners which suggest the efforts being made on the part of the petitioners and their Khadya Padarth Vyapar Sangh where they had been trying to impress upon for creation of the infrastructure and intra department correspondence for laying down the roads, providing electric connections and water facility. But these matters can be better considered by the respondent themselves as rightly observed by this Court in M/s. Ram Sukh Chunni Lal (supra) wherein this Court had directed the respondents that if the petitioners deposit the amount so claimed by the respondents within 30 days from the date of the judgment, the respondents shall not proceed to cancel their allotment. In

the present case too I am of the considered view that it would be better in the interest of justice to direct the respondents not to cancel the allotment of the shops provided they deposit the amount claimed by the respondents within four months. In case the petitioners fail to make payment of the recoverable dues within the aforesaid period of four months, the impugned order would stand revived. In the meantime the petitioners shall make a representation to the respondents within 15 days with regard to their request of waiver of interest, penalty, surcharge and other taxes giving out the reasons thereof with the documents which they may prefer to enclose therewith to the Director, Rajasthan State Electricity Board who keeping in view the observations made

herein above shall proceed to decide the same in accordance with law within 60 days from the date of representation is made to him and in case the decision on the representation is waiver, whether partial or whole, of any of the aforesaid charges, the petitioners would be entitled to adjustment in the amount so claimed by the respondents.

With these observations, the writ petitions stands disposed of with no order as to costs.

(Mohammad Rafiq),J.

Rs/-